
TRAFFICKING IN CHILDREN AND THE POCSO FRAMEWORK: EXAMINING JURISDICTIONAL CONFLICTS, EVIDENTIARY CHALLENGES, AND THE IMPLEMENTATION DEFICIT

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ABSTRACT

One of the worst violations of children's rights that the Indian legislature has had to deal with is that of the commercial exploitation of children. Unfortunately, the Indian legislation has been incapable of dealing with such an abuse of rights due to its inherent deficiencies like lack of a proper statutory regime, ineffective enforcement, and lack of coherence. Instead of using a single legislative scheme, India uses a combination of POCSO 2012, ITPA 1956, BNS 2023, and JJ Act 2015. In this research paper, the issue is analysed in terms of the three aspects of India's failure to prosecute effectively cases of child trafficking. First, the conflict of jurisdictions under POCSO and ITPA, analysing the lacunae in charge framing, procedural superiority, and interagency cooperation. Second, the evidentiary problems, which arise in the course of prosecutions under POCSO in relation to child trafficking, are considered. In particular, this includes incorrect application of presumption clauses under Section 29, irrelevancy of consent as a condition of coercion established in *Debraj Dutta v. State of West Bengal* (2026), and evidentiary standard from *Attorney General v. Satish* (2021). Finally, the problem of implementation is addressed based on the data from NCRB and US Trafficking in Persons Reports (2024) showing 89.2% of trial pendency rate. *Prajwala v. Union of India* (2026) and Articles 21, 23, and 39 of the Indian Constitution serve as a basis for suggesting unification of anti-trafficking statute, judicial training, and entitlements for rehabilitation.

Keywords: POCSO Act, Child Trafficking, ITPA, Jurisdictional Conflict, *Prajwala v. Union of India*, Implementation Deficit.

I. INTRODUCTION

Child trafficking for commercial sexual exploitation strikes at the most fundamental rights of children to security, dignity, and development free from exploitation.¹ The scale of this crisis is reflected in institutional rescue data: the NCPCR's Anti-Child Trafficking Cell has documented the recovery of 964 children, while ground-level operations continue to expose fresh network including a May 2025 intervention in Saran district, Bihar, through which seventeen minor girls were retrieved from exploitation within travelling orchestra groups.² These numbers however, shows what the system wants to see the true scale remains concealed behind institutional failure, legislative fragmentation, and prosecutorial confusion.

India has no dedicated anti-trafficking statute. The legal response is instead distributed across four enactments — Protection of Children from Sexual Offences Act, 2012, the Immoral Traffic (Prevention) Act, 1956 ITPA, the Bharatiya Nyaya Sanhita, 2023 BNS, and the Juvenile Justice (Care and Protection of Children) Act, 2015. These statutes are different from each other in terms of history, purpose, and procedures. A trafficked child also victim of sexual exploitation, all of these statutes apply simultaneously.

Possibly the most authoritative judicial recognition of this structuralist problem invoked came from *Prajwala v. Union of India*.³ Wherein the Supreme Court after 20 years of continuing mandamus, noted that there does not exist a uniform and enforced legal framework in India to regulate rescue, prosecution and rehabilitation of trafficking victims.⁴ The Court further found that where a commercial sexual exploitation victim is a child, POCSO must apply alongside both the BNS and ITPA, such that no investigating officer could find their way to a case relating to trafficking by reference to any particular statute in isolation.⁵ The judgment further flagged that the BNS deviates from the internationally recognised Palermo Protocol⁶ by requiring proof of the "means" element even when the victim is a child a lacuna the Court described as requiring immediate legislative attention.⁷

¹ HAQ: Centre for Child Rights, "Child Trafficking in India" 4 (2016).

² PTI, "964 Children Rescued So Far by Anti-Child Trafficking Cell: NCPCR" *The Hindu*, May 25, 2025.

³ *Prajwala v. Union of India*, 2026 LiveLaw (SC) 574.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000, art. 1.

⁷ *Supra* note 2.

This paper critically examines three interlocking dimensions of India's failure to effectively prosecute child trafficking: the jurisdictional conflicts arising from the overlapping legislative framework; the evidentiary challenges unique to POCSO trafficking prosecutions; and the deep implementation deficit in the special court mechanism. It argues that POCSO's protective promise though judicially reaffirmed will remain structurally unrealised without unified legislation, specialised institutional capacity, and constitutionally grounded rehabilitation entitlements rooted in Articles 21 and 23 of the Constitution of India.

II. LEGISLATIVE ARCHITECTURE: THE OVERLAPPING FRAMEWORK

The regulatory framework relating to child trafficking in India is not product of single legislative vision, but rather a combination of various Acts passed at different times in reaction to a particular social problem, yet resulting in an overall legislation, which contains a series of contradictions of equal importance to the protections it affords.⁸

The ITPA, enacted in 1956, constitutes India's first legislative engagement with the problem of trafficking and was shaped by the country's ratification of the International Convention for the Suppression of Immoral Traffic in Persons, 1949. Its essential orientation was regulatory rather than victim-protective.⁹ Rather than criminalising the act of sexual intercourse per se, the ITPA targets the commercial organisation of prostitution.¹⁰ Section 5 imposes punishment on anyone who being a pimp, procures, induces, or takes any person for prostitution.¹¹ The punishment provided in the section is three to seven years of rigorous imprisonment, and, if a child under sixteen as defined under Section 2(aa) is a victim of such a crime, the sentence may be extend to fourteen years or even up to life imprisonment.¹² This is the first of several legislative inconsistencies the ITPA classifies a child as under sixteen, whereas the Protection of Children from Sexual Offences Act, 2012 (POCSO) defines a child as any person below the age of eighteen years.¹³ Consequently, a child sixteen or seventeen year old would fall into a legal vacuum, where they would not benefit from the enhanced penalties for child trafficking in the

⁸ Dhivya U and Sandhiya K, "Child Trafficking – A cancer to be cured" 18 *Supremo Amicus* 252 (2020).

⁹ Global Alliance Against Traffic in Women, "Collateral Damage: The Impact of Anti-Trafficking Measures on Human Rights around the world" 114 (2007)

¹⁰ Aman Dube, "A Study on the Interplay between POCSO and ITPA in cases of Minor Sex Trafficking" 6 *Indian Journal of legal Review (IJLR)* 734 (2026).

¹¹ The Immoral Traffic (Prevention) Act, 1956 (Act 104 of 1956), s. 5.

¹² *Id.*, ss. 2(aa), 5.

¹³ The Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 2(d).

ITPA, whilst being able to enjoy the benefits of POCSO.

Unlike the ITPA's focus on the organisation of prostitution, POCSO is victim-centred legislation directed at all forms of sexual violence against children.¹⁴ The POCSO Act criminalises a range of offences against children, including penetrative sexual assault, aggravated sexual assault, sexual harassment, and the use of children for pornographic purposes.¹⁵ Furthermore, Section 29 provides for a presumptive guilt principle in relation to the offender once the essential facts are proven, the burden of proof shifts to the accused.¹⁶ In addition, POCSO requires special treatment of children in terms of investigation, medical examination, and trial process carried out by a Special Court.¹⁷ Still, POCSO does not include a particular provision regulating the relationship between the statute and the ITPA as well as the BNS, leaving the coordination of such cases to the discretion of courts only.¹⁸

BNS provides for two relevant sections: 143 and 144, which define trafficking as the recruiting, transporting or harbouring of persons through threats, coercion, abduction, deceit or other forms of exploitation, imposing additional penalty in case the trafficked person is a child.¹⁹ Despite the positive impact the legislation is supposed to make, BNS suffers from an important limitation it demands to prove 'means' of trafficking even in case of a child victim, which contradicts the provisions of the Palermo Protocol, 2000. Indeed, according to the document, 'means' should not matter for a child victim as recruitment or harbouring alone should constitute trafficking irrespective of the 'means' of such an act.²⁰ In *Prajwala*, the Supreme Court highlighted the urgent need to address child trafficking.²¹

Finally, a network of Child Welfare Committees established under the JJ Act, 2015 serves as the first point of contact for rescued child victims.²² In cases involving child trafficking, the Committees should cooperate with Special Courts in matters relating to POCSO and Anti-Human Trafficking Units. However, in practice, the failure to cooperate between the

¹⁴ Vaishnavi Rajput, "Law relating to child sexual exploitation and abuse: A case study" 6 *Burnished Law Journal* 1 (2024).

¹⁵ Indisha Sachan, "Addressing Vulnerability: POCSO Act, Juvenile Justice Act, and Youth" 6 *International Journal of Law Management & Humanities* 2338 (2023).

¹⁶ *Supra* note 12, s. 29.

¹⁷ *Id.*, ss. 24, 25, 26, 28.

¹⁸ Trivedi Harnil Udayanbhai & Dr. Pankajkumar Chamar, "Human Trafficking in India: Legal Frameworks, Challenges, and Policy recommendations" 4 *Vidya-A Journal* 262 (2025).

¹⁹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 143, 144.

²⁰ *Supra* note 5, art. 3(c).

²¹ *Supra* note 2.

²² The Juvenile Justice (Care and Protection of Children) Act, 2015 (Act 2 of 2016), ss. 27-30.

institutions resulted in failures in prosecution and rescue of child victims, as reported by the Court during twenty years of supervision in the Prajwala case.²³

On a higher plane, Article 23 prohibits the traffic of human beings in all forms, whether State or non-State, whilst Articles 39(e) and (f) create positive obligations for the State to take necessary measures to ensure protection of children from exploitation.²⁴ As part of other provisions of legislations, they form the basis of the above-mentioned legislation, but even Supreme Court of India admitted the fact that there was something lacking in the legislative framework, which was incomplete and inconsistent.²⁵

III. JURISDICTIONAL CONFLICTS: POCSO VS. ITPA

India's failure to prosecute child trafficking does not stem from legislative absence. On the contrary, an excess of overlapping statutes pulls enforcement agencies, prosecutors, and courts in divergent directions a structural disorder that accused traffickers routinely exploit.²⁶ The fundamental problem within this issue lies in the ambiguity surrounding the issue of "the Protection of Children from Sexual Offences Act, 2012 and the Immoral Traffic (Prevention) Act, 1956," two Acts which have been formulated separately for different purposes and have been implemented independently of each other without the guidance of any intermediary principle.

The initial problem stems from the divergent definitions of what constitutes a "child." Under Section 2(aa) of the Immoral Traffic (Prevention) Act, 1956 (ITPA), the term "child" is restricted to persons below the age of sixteen years.²⁷ In contrast, Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (POCSO) extends the same protection to all persons below the age of eighteen years.²⁸ This difference of two years becomes highly consequential in the case of trafficking victim between the ages of sixteen and seventeen. In this scenario, the victim falls outside the purview of ITPA's enhanced protective provisions yet falls under POCSO. As a result, in the event that investigators pursue the case primarily under the jurisdiction of ITPA, the crucial role that POCSO plays can get lost. In fact, the 2024 TIP

²³ Supra note 2.

²⁴ The Constitution of India, arts. 23, 39(e), 39(f).

²⁵ Supra note 2.

²⁶ Supra note 7 at 258.

²⁷ International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of Others, 1949, art. 1.

²⁸ Supra note 10, s. 2(d).

Report of the United States found that Indian law enforcement personnel were found to have been unable to use all relevant legal mechanisms in the prosecution of the trafficking cases. This was partly due to their lack of knowledge on statutes.²⁹

Another source of controversy involves customer liability under the ITPA. According to Section 7(1) of the legislation, it is an offence to carry on prostitution as well as to carry on prostitution with any person within a notified area.³⁰ Whether or not this language includes customers — and more broadly, those engaging in sexual acts with trafficked children — has produced irreconcilable High Court decisions. Kerala High Court in the case of *Mathew v. State of Kerala* observed that the person involved in sexual intercourse inside the brothel is considered a client, thus he comes under section 7(1).³¹ In making its decision, the Court relied on the fact that immoral traffic would remain impossible without a customer, and that the legislature intended to cover customers within this section. This interpretation was reinforced in the same court's earlier reading of Section 5, which expanded the term "procure" to include customers seeking services.³²

However, the Andhra Pradesh High Court in *Goenka Sajan Kumar v. State of A.P* ruled that to make out the offence under Section 3, 4, or 5 of ITPA, it must first be proven that the accused either maintained a brothel, lived on earnings of prostitution, or procured any person for the purpose of prostitution.³³ None of these actions applies to a customer. The Telangana High Court in a consolidated order on twenty-one criminal petitions in 2023 similarly quashed proceedings against customers on the grounds that voluntary participation of the victims negates the existence of trafficking under section 161 CrPC. In addition, court held Section 370A IPC required proof that the customer knowingly engaged a trafficked person for sexual exploitation, a fact that police agencies could not establish at the FIR stage.³⁴ The Karnataka High Court in *Sarvan v. State of Karnataka*³⁵ reinforced this view, acknowledging that while customers encourage prostitution, the absence of a specific penal provision precluded their prosecution under the ITPA.

²⁹ Government of the United States of America, "Trafficking in Persons Report 2024" 32 (Department of State, Washington D.C., 2024).

³⁰ *Supra* note 29, s. 7(1).

³¹ 2022 LiveLaw (Ker) 639.

³² *Ibid.*

³³ 2014 SCC OnLine Hyd 1192.

³⁴ *In re* CrI.P. Nos. 5073, 5560, 5673 of 2023 and connected matters, Common Order dated August 16, 2023 (Telangana HC).

³⁵ 2018 SCC OnLine Kar 634.

These differences among High Courts pose a major obstacle in prosecution of child trafficking cases, especially when victims have been coached to claim voluntariness, the question of customer liability under POCSO and the ITPA directly determines whether the chain of exploitation is prosecuted in its entirety or only at its organisational nodes. The Supreme Court, in *Prajwala v. UOI*, sought to address this prosecutorial fragmentation by holding that trafficking-related offences should not be investigated or prosecuted in isolation.³⁶ Instead, investigating officers must consider all applicable statutory provisions rather than confining the case to a single enactment. This approach acknowledges that limiting prosecutions to the ITPA while disregarding offences under the POCSO Act contributes to gaps in accountability and weakens the legal response to child trafficking. Specifically, the Court also clarified that the accused's prior knowledge about employment within the sex industry does not prevent them from being victims of trafficking because of deceitful initial conditions.³⁷

IV. EVIDENTIARY CHALLENGES IN POCSO TRAFFICKING PROSECUTIONS

Where the prosecution of child trafficking under the POCSO Act is concerned, there exist certain evidentiary challenges that are inherent in the nature of such proceedings as compared to ordinary prosecutions for sexual offences.³⁸ However, where the case involves commercial sexual exploitation, the evidentiary problems take on additional complexity owing to the issue of consent, victim testimony validity, presumption clauses, and the difficulty of proving intent to commit the crime in the absence of physical evidence of abuse. The aforementioned difficulties arise due to the very nature of the POCSO Act and the fact that there is no procedure for conducting POCSO-based trafficking cases.³⁹

Firstly, the issue of consent arises in almost all trafficking cases involving POCSO. While the POCSO Act unequivocally states that, any individual under the age of eighteen is incapable of legally giving consent to sexual activities.⁴⁰ In *Prajwala*, the Supreme Court has gone a step further and stated that the consent of the child will be inconsequential in the case of POCSO trafficking, irrespective of whether or not any “means” were used to make the child engage in sex.⁴¹ Furthermore, the Court clarified that a person's knowledge that he/she will be working

³⁶ Supra note 2.

³⁷ Ibid.

³⁸ Supra note 9 at 733.

³⁹ Ibid.

⁴⁰ Supra note 10, ss. 2(d), 3.

⁴¹ Supra note 2.

in the sex trade does not make them immune to the classification of "trafficking victim", especially if deception regarding the nature of the job has been used against them.⁴² In effect, the Court has explicitly rebutted the common prosecutorial mistake of assuming a child who displays no resistance to commercial sexual exploitation to be a voluntary participant in the sex trade. It is submitted that this is a result of the broader structural flaw noted at the outset of this discussion the conflation of trafficking and prostitution in the ITPA leads investigating officers to adopt a framework that treats the child victim as an adult sex worker, thus compromising the evidentiary structure of POCSO in this regard from the outset.⁴³

Next evidentiary problem that emerges is related to Section 29 of POCSO, where the presumption of guilt would be put forth in light of proof of fundamental facts, which means that once the basic facts regarding the sexual assault are proved, then the onus would shift on the accused.⁴⁴ This presumption of guilt is particularly relevant in cases involving trafficking. Trafficked children frequently give testimony that appears inconsistent not from dishonesty, but because trauma, coercive environments, fear of reprisal, and the stigma surrounding prostitution erode the coherence of their recollections; questioning a traumatised child further poses the risk of retraumatisation or producing contradictions for the defence to use.⁴⁵ This problem partly addresses by the aforementioned presumption that however, has been subjected to an important caveat by the Supreme Court. In the case of *Debraj Dutta v. State of West Bengal*, the court stated, "For applying the presumptive law, firstly, it is to be shown that the basic facts are proved, and secondly, the evidence regarding the said facts should be completely credible and trustworthy."⁴⁶ To put it in other words, if the testimony of the child-victim is not found to be entirely credible and reliable, then the presumption of guilt cannot be derived from such testimony. As pointed out by the Court, "Unless the testimony of a victim child is found to be fully credible and trustworthy, the question of presumption on such basis will not arise."⁴⁷

In this case, certain contradictions were found between the victim's statements to her mother and those made during the trial, along with undue delay in filing a case against her exploiters

⁴² Ibid.

⁴³ Ishita Sharma, "Prajwala's Consent Is Sovereign Until Someone Doubts It" *LiveLaw*, June 14, 2026, available at <https://www.livelaw.in/lawschool/articles/prajwala-consent-sovereign-537714> (last visited on June 21, 2026).

⁴⁴ *Supra* note 10, s. 29.

⁴⁵ Shruthi Keerthana Alampally and Goteti Kumari Saigayatri, "Echoes of Exploitation: Building Stronger Evidentiary Standards for Child Trafficking" VII(V) *Indian Journal of Law and Legal Research* 1795, 1796 (2025).

⁴⁶ *Debraj Dutta v. State of West Bengal*, 2026 LiveLaw (SC) 401.

⁴⁷ Ibid.

and refusal to undergo medical examination.⁴⁸ It is apparent that this ruling creates problems for prosecuting the case. A testimony of the trafficked child victim will become inconsistent due to trauma, fear, or coercive environment of their exploitation, but, according to the Debraj Dutta criterion, it will deprive them of benefits of the presumption of guilt. The presumption of guilt clause, meant to assist vulnerable victims of rape and trafficking in providing sufficient proof of their innocence, becomes applicable only if their statement is considered to be sufficiently credible and trustworthy something that trafficking victims, due to the nature of their abuse, cannot be capable of doing. It is also necessary for investigating officers to correctly frame charges under POCSO, and failure to do so is another difficulty in prosecuting a trafficking case, as discussed earlier.

Finally, the third evidentiary issue, which arises under POCSO, is the threshold of evidence prescribed by the decision of Attorney General for India v. Satish to prove sexual abuse under the POCSO Act. In the case of Attorney General for India v. Satish, the Court held that “the key to sexual offence was the ‘sexual intent’ and not the ‘skin-on-skin physical contact’.”⁴⁹ In a trafficking case, this rule can potentially facilitate prosecution because it makes it easier for prosecutors to prove a child's sexual exploitation, even if it has taken, place remotely or using intermediaries. Nevertheless, the ruling is of limited utility in practice if medical examination evidence of penetration is missing. In case of Vikas v. State, the absence of corroborating medical evidence regarding penetration led the Delhi High Court to reduce the conviction of an aggravated penetrative sexual assault to attempt to commit a sexual assault due to a well-reasoned and well-founded statement by the victim. Thus, the defendant received a ten-year term instead of a thirty-year one.⁵⁰ As has been noted above in relation to shelter homes and rescue operations, such medical examinations tend to be irregular, especially in cases of trafficking.

In combination, it would appear that all three of these factors lead to a paradox in regard to POCSO, as it seems to be a well-thought-out law, but when it comes to enforcement, there are several flaws. The protection of the child can occur when the officers make correct use of the statute, when the medical examination takes place after filing of FIR, and when the case is filed based on POCSO and not the Indian Penal Code under ITPA. When any of the above-

⁴⁸ Ibid.

⁴⁹ (2021) SCC OnLine SC 42.

⁵⁰ *Vikas v. State*, 2026 DHC 1757-DB.

mentioned criteria are missing, as indicated by the evidence provided in the paper, the burden of proof falls upon the victim.⁵¹

V. THE IMPLEMENTATION DEFICIT: SPECIAL COURTS AND INSTITUTIONAL GAPS

Anti-human trafficking laws, regardless of their soundness, can never function better than their enforcing agencies do. As seen from the material collected for this study court rulings, NCRB information and independent scholarly studies the problem of institutional failure is not an occasional one, but rather a widespread and all-state one. In fact, the problem of institutional failure in question was so huge that even the Supreme Court in *Prajwala* had to resort to its extraordinary constitutional powers under Article 32 & 142.⁵²

Among the institutional failures documented in this area, the dysfunction of Special Courts under Section 28 of POCSO has attracted the most attention. By 2021, while 640 Fast Track Special Courts had been constituted out of which 338 were designated POCSO courts across 26 states and union territories their creation did not translate into meaningful improvement in case disposal.⁵³ However, the existence of such courts did not contribute to efficient dispensation of justice in POCSO cases. A study performed by the Centre for Child and the Law, National Law School of India University (CCL-NLSIU), which involved five Indian states. Study shows that The POCSO Special Courts had been seen to deal with cases that did not fall under POCSO, and similarly, the Special Public Prosecutors had also been managing cases that were outside their purview, thus weakening the bond building required for prosecution.⁵⁴ Finally, the study revealed that except for two POCSO courts in Delhi, all others lacked special entrances or waiting rooms for children, thus failing to avoid the inevitable confrontation with traffickers in advance of trials, which was the objective of Section 36 of the POCSO Act.⁵⁵

The data provided in regard to Karnataka is quite illustrative regarding the general situation. According to Bommanna and Suma K.G., POCSO case pendency in Karnataka rose from 78%

⁵¹ Supra note 7

⁵² Supra note 2.

⁵³ Ministry of Women and Child Development, "NCPCR Holds Regional Consultative Meeting on POCSO" (Government of India, Press Release, April 2, 2022).

⁵⁴ Lunavath Ramesh, "Special Courts and the POCSO Act, 2012: A Study on Structural Compliance" 11(2) International Journal of Law 31, 33 (2025).

⁵⁵ Id. at 33.

to 85% between 2019 and 2023, while the average trial duration increased from 348 days to 421 days over the same period — far exceeding the statutory one-year requirement under the POCSO Act.⁵⁶ The same study further records that conviction rates declined from 26.3% in 2019 to 22.9% in 2023, and in Bengaluru, the disposal rate fell to a mere 7% by mid-2024.⁵⁷ The aforementioned data show that the problems in question are structural, as evidenced by the description given in the 2024 US TIP Report, according to which India failed to establish specialized courts for handling trafficking cases, prosecutors were poorly trained, and fast-track courts processed just 28 POCSO cases a year, leaving tens of thousands pending.⁵⁸

Moreover, the issues in question are not limited to inefficient disposal of cases. In his address to a regional consultative meeting held by the NCPDR, Justice S. Ravindra Bhat pointed out the state governments' reluctance to prioritize the allocation of funds for creation of a system of rehabilitation and care for child victims of crimes. Namely, regardless of the efforts made by the government to develop a good policy and POCSO Rules to support it, the problem will remain unless the state allocates a considerable amount of money for creating the required infrastructure.⁵⁹ This idea is confirmed by the CCL-NLSIU report that showed that POCSO Special Courts failed to create a child-friendly environment, lacking accessible toilet rooms, waiting rooms, audio-visual equipment, and witness rooms. The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime provide such measures as minimal conditions of being child-sensitive and child-friendly.⁶⁰

In addition, the institutional coordination is another issue that affects the efficiency of anti-child trafficking measures. For example, in Karnataka, Child Welfare Committees are often informed too late about registration of a POCSO case, which means failure in providing timely psychosocial support to victims of trafficking.⁶¹ As per the decision of the Supreme Court in *Prajwala* case, things were the same in POCSO cases for the last 22 years, the victims did not get proper attention, and the conditions of the shelters were not satisfactory. The worst part was that there was no coordination between the Anti-Human Trafficking Units, Child Welfare

⁵⁶ Bommananna and Suma K.G., "Implementation of the POCSO Act in Karnataka: A Critical Review of Challenges and Institutional Response" 14(8) International Journal of Multidisciplinary Educational Research 114, 116 (2025).

⁵⁷ *Id.* at 117.

⁵⁸ *Supra* note 24 at 32.

⁵⁹ *Supra* note 46.

⁶⁰ American Bar Association Center on Children and the Law, American Bar Association Rule of Law Initiative & Group Development Pakistan, "Criminal Justice Matters Involving Children: Training Manual for Judges, Prosecutors and Investigators" p. 121 (2020).

⁶¹ *Supra* note 49 at 118.

Committees, and legal aid authorities.⁶² The Supreme Court, in a suo motu case concerning the exploitation of children in orphanages, warned that if officials failed to guarantee minimum care standards for children staying in such homes, they violated their human rights and could be held accountable.⁶³

For example, according to the NCPCR Anti-Child Trafficking Cell records, even as recent as May 2025, there have been 964 cases of child trafficking victims who included 17 minors, recovered from orchestras in Saran district of Bihar.⁶⁴ However, unless the appropriate infrastructure is created and maintained by the state, the results of the operation mentioned above can turn into a mere formality. The lack of a proper CWC assessment and prosecution in a child-friendly court, followed by poor rehabilitative measures, will result in returning children to the exact conditions of vulnerability in which they were trafficked in the first place. In *Re: Prajwala*, the Supreme Court noted that without a rehabilitation program, the victim would be subjected to the same conditions again.⁶⁵

VI. CONSTITUTIONAL DIMENSION: ARTICLES 21, 23 & 39

India's anti-trafficking regime, as outlined by the preceding sections, suffers both from legislative and institutional lacunae, which cannot be viewed in isolation from the constitutional basis on which it ought to rest. Under Article 23 of the Constitution, "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."⁶⁶ It applies not only to state parties but also to non-state actors. The Supreme Court has in fact, always given a liberal interpretation to Article 23, viewing its ambit as extensive as to cover all forms of human trafficking as well as all those who are in any condition of exploitation, irrespective of how the same may be classified under any statute.⁶⁷ Article 39 embodies a constitutional commitment requiring the State to prevent the exploitation of children. Article 39(e) and Article 39(f) explicitly obligate the State to secure the health and well-being of children as well as their upbringing in a manner that ensures freedom and dignity.⁶⁸ Thus,

⁶² Supra note 31.

⁶³ *Re: Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*, Writ Petition (Criminal) No. 102 of 2007, (2017) 5 SCC 578.

⁶⁴ Supra note 1.

⁶⁵ Supra note 31.

⁶⁶ The Constitution of India, art. 23.

⁶⁷ Supra note 2.

⁶⁸ The Constitution of India, arts. 39(e), 39(f).

through the combination of Articles 23 and 39, there is created a negative as well as a positive constitutional duty of the State that is continuous even post-rescue.

As far back as 1997, in the case of *Gaurav Jain v. Union of India*, the constitutional duty of the State towards trafficking victims was laid down when the Court held that children of the victims of trafficking had a right to equal opportunity, dignity, and rehabilitation for full social participation.⁶⁹ Furthermore, it was also ruled that the fallen women were not to be considered as offenders, but rather as victims of socio-economic difficulties and that the State was to set up an institution in the Ministry of Women & Child Development to make policies regarding their economic empowerment and institutional rehabilitation of the children. Supreme Court use of its jurisdiction as granted by Article 142 of the Constitution since there was no comprehensive law in existence on the matter.⁷⁰ It may be noted that the similarity of this decision rendered by the Supreme Court way back in 1997 with the more recent case of *Prajwala v. UOI* highlights the fact that in both the cases, the failure of Parliament to frame the necessary legislation led to the intervention of the Court under Article 142.

In *Prajwala*, the concept of constitutional right to rehabilitation of victims has been discussed at length. In the process, it has been held that the right to rehabilitation flows directly from Article 21 itself as a part of right to life and dignity, and without rehabilitation the victims return to the same circumstances, which originally made them vulnerable and thus made them victims of human trafficking.⁷¹ It has been held that in light of the fact that there is no framework under Indian statutes for dealing with the matter of rescue, prosecution and rehabilitation of trafficking victims, and hence a lack of uniformity and arbitrariness in treatment, a Victim Protection Plan needs to be made under the constitutional powers under Articles 32 and 142.⁷²

Internationally, the duty of States Parties to guarantee that the rights of the victims are protected and assistance provided is set out in Article 6(6) of the Palermo Protocol.⁷³ The comparison of this international obligation with the constitutional duty of the Supreme Court as established in *Gaurav Jain* and *Prajwala* reveals the fact that the Indian failure in this regard has never been one of constitutional or international design. It merely lies in the lack of legislative action

⁶⁹ *Gaurav Jain v. Union of India*, AIR 1990 SC 292.

⁷⁰ *Ibid.*

⁷¹ *Supra* note 2.

⁷² *Ibid.*

⁷³ *Supra* note 5, art. 6.

necessary to create an effective anti-trafficking regime under domestic law.

VII. CONCLUSION AND REFORM PROPOSALS

There are three structural failures noted here. First, jurisdictional competition between POCSO, ITPA, and BNS that remains unsolved. Secondly, evidentiary standards, which become impractical when applied to victims whose inconsistencies arise because of prolonged exploitation. Thirdly, implementation failure due to which Special Courts fail to administer justice in a timely manner despite the number of Special Courts being large enough. "None of these structural flaws should be overlooked or regarded as inconsequential. They are all the result of continued application by the Indian parliament of the colonial legislation, which was not meant to be used for cases of child trafficking, and which operates separately from the law aimed at protecting children."

As pointed out by the Supreme Court in *Prajwala v. UOI*, India desperately needs a unified statute to cover trafficking across the board, as opposed to the disjointed approach currently in use.⁷⁴ This paper supports this position, and offers three concrete suggestions for achieving that goal. Firstly, Parliament should amend Sections 7, 8, and 20 of the ITPA, sections found by the Supreme Court to have been used disproportionately against victims of trafficking.⁷⁵ Secondly, the detention-based rehabilitation system of the ITPA, whereby a trafficked child can be detained in a safe home for one to three years, must be critically analysed, as it is a practice that could easily turn into something else entirely.⁷⁶ Lastly, Parliament should reconcile Sections 143-144 of BNS with the Palermo Protocol by stripping away the "means" requirement when the victim is a child an amendment which the Supreme Court in *Prajwala* itself saw as necessary.⁷⁷

Legislative reform is necessary, of course but as has been demonstrated by the example of NCPCR's rescue operation-involving children rescued from orchestra groups in Bihar in 2025. there is no point in rescuing children when it does not lead to follow-up action by the POCSO trained CWCs.⁷⁸ Without unification and coordination across statute and institutions, the protective effect of POCSO will always remain illusory.

⁷⁴ Supra note 2.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Supra note 2.

⁷⁸ Supra note 1.